vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2021 OF 2005

Nandkumar D. Gaidhani & Anr. ... Petitioners

V/s.

Prabhavati P. Kharote & Ors. ... Respondents

Mr.G.S. Godbole for Petitioners
Mr.A.S. Avhad for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 28, 2005**

P.C.:

. This Petition challenges the concurrent findings of fact of the trial Court and the appellate Court. The Petitioners contend that the need of the landlady pleaded in the plaint was that the husband of the plaintiff had suffered from paralysis and therefore, the plaintiff thought it fit to shift to Nasik where she would be able to secure the help of her brother and sister living in Nasik to deal with the problems she faced at her advanced age. It is contended on behalf of the Petitioners that during the pendency of the litigation, the plaintiff's husband expired and therefore the need pleaded by her in the plaint did not survive. Nor was it established that she was staying away from her son or that it was necessary for her to live in Nasik to remain in constant touch with her

brother and sister. It is further submitted that unless there is a pleading to the effect that the plaintiff herself required the premises in Nasik there was no need for such a decree to be passed. Reliance is placed on the judgment of the Supreme Court in *Om Prakash Gupta v/s. Ranbir B. Goyal,* **(2002) 2 SCC 256** to submit that unless there is a pleading subsequent events cannot be taken into consideration by the Courts below.

2. Both the Courts below have, in my view, rightly come to the conclusion that the need which was pleaded by the plaintiff in the plaint including the need for her to settle in Nasik where she would have the company of her siblings who were already residing in Nasik. It cannot be accepted that merely because her husband had expired during the litigation, the need of the Plaintiff to stay in Nasik was not in existence. The plaint discloses that she was required to go to Nasik since not only was she unable to aid her husband who was suffering from paralysis but because the business which her husband had commenced was being run by her son. She has pleaded that the relationship between her son and herself was strained. In such circumstances, I see no reason to interfere with the impugned order. Petition rejected.

3. The learned Counsel appearing for the Petitioners prays for some time to vacate the suit premises. Time to vacate the suit premises is granted upto one year from today subject to the Petitioners and all the adult members in their family furnishing an undertaking in the usual terms within three weeks from today.